

(1979) 09 GUJ CK 0008
In the Gujarat High Court

Muljibhai Hirabhai

APPELLANT

Vs

Dahyabhahi Dajibhai Patel and Another

RESPONDENT

Date of Decision : 27-09-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227, 227

Citation : (1979) 2 GLR 303

Hon'ble Judges : A.N. Surti, J

Bench : Single Bench

Judgement

A.N. Surti. J.

1. These two Special Civil Applications are directed by the original defendant No. 1 of Regular Civil Suit No. 18 of 1975 of the Court of the learned Civil Judge, Senior Division, Navsari against the impugned common order dated March, 17, 1976 passed by the learned District Judge, Valsad in Civil Appeals Nos. 4 and 5 of 1975 of his Court.

2. The suit was filed by opponent No. 1-Dahyabhahi Dajibhai Patel in the Court of the Civil Judge, S.D., Navsari for permanent injunction restraining the petitioner and original defendant No. 2 from disturbing his possession of the suit house and lands situated at village Mangrol and village Mimlai. The plaintiff claimed possession of the said properties on the ground that he is the heir of the deceased Jaga Desai who died on or about January 8, 1975.

3. During the pendency of the suit the plaintiff gave an application, Ex. 5, for temporary injunction and that application after the arguments of both the sides was granted in respect of Nimlai lands and house, but the application, Ex. 5, was rejected in respect of Mangrol lands.

4. The petitioner original defendant No. 1 as well as the plaintiff-opponent No. 1 were aggrieved by the said order passed by the learned trial Judge on Ex. 5 of the record and the proceedings of Civil Suit No. 18 of 1975 of the Court of the

learned Civil Judge, S.D., Navsari and filed both the aforesaid appeals in the court of the learned District Judge.

5. The learned District Judge accepted the appeal which was filed by opponent No. 1-the plaintiff in the suit and dismissed the appeal filed by the petitioner-defendant No. 1.

6. It is under these circumstances, that the petitioner was having a grievance against the impugned common order passed by the learned District Judge in the aforesaid appeals and has filed the present two petitions under Articles 226 and/or 227 of the Constitution of India.

7. When these two petitions were called out for hearing and disposal before me, I invited the attention of Mr. Bhatt, the learned advocate for the petitioners, to the reported decision on the Supreme Court, 76. In the said decision the Supreme Court has observed as follows:

In our opinion the High Court had no jurisdiction to interfere with the order of the first appellate Court. It is not the conclusion of the High Court that the first appellate Court had no jurisdiction to make the order that it made. The order of the first appellate court may be right or wrong; may be accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction u/s 115 of the Civil Procedure Code.

8. Realising that the petitioner could not file any civil revision applications against the impugned common order passed by the learned District Judge, the petitioner has obviously filed these two petitions under Articles 226 and 227 of the Constitution of India. Prima facie, I fail to understand as to how such a device can be resorted to under the circumstances mentioned hereinabove. This is a clear case where the learned District Judge having taken into consideration all the facts and circumstances of the case accepted the appeal filed by opponent No. 1-the plaintiff, and dismissed the appeal filed by the petitioner. Under the circumstances, it is not possible for me to take the view that the learned District Judge who decided the two appeals had no jurisdiction to pass the impugned order. It was equally difficult for Mr. Bhatt to point out from the record of the case any error in law in regard to the jurisdiction of the District Judge or any errors of fact.

9. I may also refer to the decision of the Supreme Court in *India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another*, wherein the Supreme Court has observed, that the power of the High Court under Article 227 is one of judicial superintendence, and cannot be exercised to upset conclusions of facts, however erroneous those may be. This power of superintendence conferred by Article 227 is to be exercised most sparingly, and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

Having regard to the facts and circumstances of the case, I come to the conclusion that the learned District Judge did act within the bounds of his authority and jurisdiction. This is not a case where the learned District Judge has exceeded in his jurisdiction when he decided the two appeals.

10. An view of what has been stated above, I do not see any substance or merit in the two special applications, and hence, the rule in each of the two petitions is discharged with no order as to costs. While dismissal the two petitions, I direct the learned Civil Judge to see that Regular Civil Suit No. 18 of 1975 is disposed of as expeditiously as possible, and in that behalf, if necessary, he may even request the Mamlatdar to dispose of the proceedings before him as expeditiously as possible.